

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

GINA M. BARRY,)
)
Plaintiff,)
)
v.) No. 4:08-CV-1632-JCH
)
S & H TOWING,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter is before the Court upon the filing of plaintiff's financial affidavit, which the Court will construe as a motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Upon consideration of the financial information, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. As a result, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Additionally, the Court has reviewed the complaint and will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis in either law or in fact."

Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint

Plaintiff brings this action pursuant to 42 U.S.C. § 1983, summarily alleging that defendant S & H Towing has engaged in racketeering, in violation of her 4th, 5th and 15th Amendment rights. This conclusory statement forms the entirety of plaintiff's statement of the claim.

Having carefully reviewed the complaint, the Court finds that plaintiff's conclusory allegation does not rise to the level of a constitutional violation and wholly fails to state a claim or cause of action under § 1983.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's financial affidavit, construed as a motion to proceed in forma pauperis, [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint, because the complaint is legally frivolous and fails to state a claim upon which relief can be granted.

IT IS FURTHER ORDERED that plaintiff's motion for appointment of counsel [Doc. #3] is **DENIED** as moot.

An appropriate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 18th Day of November, 2008.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE